

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 05-44481

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5 In the Matter of:

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7 DELPHI CORPORATION,

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9 Debtor.

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12 (MORNING SESSION)

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 May 30, 2006

18 11:06 a.m.

19

20 B E F O R E:

21 HON. ROBERT D. DRAIN

22 U.S. BANKRUPTCY JUDGE

23

24

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1 MOTION: Notice of Hearing Proposed Seventh

2 Omnibus Hearing Agenda filed by John Wm.

3 Butler Jr. on behalf of Delphi Corporation.

4 with hearing to be held on 5/30/2006 at 11:00

5 AM at Courtroom 610 (RDD)

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25 Transcribed By: Sharona Shapiro

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1 P R O C E E D I N G S

2 THE COURT: Okay. Delphi  
3 Corporation.

4 MS. MARAFIOTI: Good morning, Your  
5 Honor. Kayalyn Marafioti on behalf of Delphi  
6 Corporation. We're here this morning for the  
7 debtor's Seventh omnibus hearing in these  
8 cases. We filed an agenda -- or a proposed  
9 agenda with the Court last week, and unless  
10 the Court has a different direction for us,  
11 we're prepared to move right through that  
12 agenda in the order stated.

13 THE COURT: All right. That's fine.

14 MS. MARAFIOTI: Very well then. The  
15 first matter on the agenda is the Deutsch  
16 Dagan order to show cause, which is being  
17 handled by the debtor's co-council, Togut  
18 Segal firm.

19 THE COURT: Okay.

20 MR. BERGER: Good morning, Judge.  
21 Neil Berger, Togut, Segal & Segal. Number one  
22 on the agenda is the last of the vendor orders  
23 to show cause for post-petition payments made

24 on account of pre-petition invoices. This is  
25 the order to show cause against Deutsch Dagan.

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1 This is the vendor in Israel. We're still  
2 waiting for confirmation of service in  
3 accordance with the Hague convention.  
4 Notwithstanding, the business representatives  
5 of Deutsch Dagan and the debtor are discussing  
6 a settlement. I referenced at our last  
7 hearing that there was a structure for a  
8 settlement. The parties are following that  
9 and I don't think that it would be aggressive  
10 to say that they're in the short strokes.  
11 It's a matter of dollars at this point. So,  
12 we'd like to continue this to our next omnibus  
13 hearing and hopefully we'll have an order  
14 submitted at or before the hearing.

15 THE COURT: Okay. That's fine.

16 MR. BERGER: Thank you, Judge.

17 MS. MARAFIOTI: Your Honor, the  
18 second matter on the agenda is the H.E.  
19 Services motion for relief from the stay.  
20 Under this motion, H.E. Services is seeking to  
21 modify the stay to continue its litigation in  
22 the District Court for the eastern district of  
23 Michigan where the movant is asserting 100  
24 million dollars worth of various civil rights,  
25 promissory estoppel and misrepresentation

8

1 claims. And the parties have agreed to  
2 adjourn this matter to the June 16 omnibus  
3 hearing date.

4 THE COURT: Okay.

5 MS. MARAFIOTI: The third matter on  
6 the agenda, Your Honor, you may remember from  
7 last time there was some colloquy on the  
8 record about the Cindie Palmer motion for  
9 relief from a stay. Here too, Ms. Palmer and  
10 the debtors have agreed to adjourn to June  
11 16th.

12 THE COURT: Okay.

13 MS. MARAFIOTI: The next item on the  
14 agenda, Your Honor, is being handled by the  
15 Togut Segal firm.

16 MR. BERGER: Judge, the next matter  
17 is the adjourned hearing for the Offshore  
18 Group motion for relief from the automatic  
19 stay to effect a setoff. This is the motion  
20 that implicated Mexican tax law. We've become  
21 familiar enough with tax law in Mexico to deal  
22 with the issues presented in this motion and  
23 there have been meetings and telephone  
24 conferences between the business  
25 representatives of both sides and we hope to

9

1 settle this. I don't think that there is any  
2 great likelihood that there's going to be a  
3 contested hearing. So with Your Honor's  
4 permission, we'd like to carry to the next  
5 date.

6 THE COURT: All right. That's fine.

7 MS. MARAFIOTI: You also have the  
8 next matter.

9 MR. BERGER: I do have the next  
10 matter, Your Honor, which is number 5.  
11 Borg-Warner Turbo Systems, Inc. lift stay  
12 motion, docket No. 3218. This is a motion by  
13 Borg-Warner seeking relief from the automatic  
14 stay from this Court for permission to  
15 commence a state court action against the  
16 debtors in Michigan to liquidate a pre-  
17 petition warrantee claim.

18 We've advised Borg-Warner that we  
19 oppose that relief. Borg-Warner asked that  
20 today's hearing be adjourned and asked for a  
21 settlement meeting with the debtors. We'd  
22 like to have that settlement meeting with  
23 them, hopefully before the next adjourn date.  
24 In any event though, Your Honor, any  
25 resolution with Borg-Warner would need to be

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1 reviewed by the committee under paragraph 18  
2 of the DIP order that pertains to setoffs.  
3 So, with Your Honor's permission, we'd like to  
4 adjourn it to June but with the anticipation  
5 that it will be probably moved into the next  
6 adjourned hearing as well.

7 THE COURT: All right. When is the  
8 Bar Date?

9 MR. BERGER: I'm sorry?

10 THE COURT: Do you remember when the



11 Bar Date is in this case?

12 MS. MARAFIOTI: July 31st, Your  
13 Honor.

14 THE COURT: Okay. All right. That  
15 adjournment's fine.

16 MR. BERGER: Thank you, Judge.

17 MS. MARAFIOTI: Your Honor, item 6  
18 on the agenda is the motion of Dane Systems,  
19 LLC for adequate protection. Dane Systems  
20 claims that it holds a lien on certain  
21 equipment of the debtors and says that its  
22 security interests are not adequately  
23 protected. The parties are in the process of  
24 trying to work this matter out and so they've  
25 agreed to adjourn this matter to June 16th.

11

1 THE COURT: Okay.

2 MS. MARAFIOTI: Item 7 on the agenda  
3 is a motion of the creditors' committee and I  
4 will turn the floor over to Latham & Watkins.

5 MR. BROUDE: Your Honor, good  
6 morning. Mark Broude, Latham & Watkins, on  
7 behalf of the creditors' committee. We're  
8 here on the application of the committee to  
9 retain Buck Consultants as the committee's  
10 pension and benefits actuary. The application  
11 was filed on April 20th, was served in  
12 accordance with the case management order as  
13 were both the original and supplemental  
14 affidavits. Buck will be retained -- we're  
15 seeking to retain Buck to January 23rd under

16 328a but its fees will be subject to review  
17 under 330, normal fee applications on an  
18 hourly basis. And no objections have been  
19 filed, Your Honor.

20 THE COURT: Okay.

21 MR. BERGER: Your Honor, for the  
22 debtor's. Following Mr. Brody's  
23 representation, there are no objections. The  
24 debtor reviewed the application, has no  
25 objection to the release or to the form of

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1 order. Just to confirm, this is not an effort  
2 to recreate any kind of data wheel. The  
3 debtor's are cooperating with Buck already and  
4 there's a good working relationship. We do  
5 not have an objection.

6 THE COURT: Okay. And they still  
7 want to send back the fee payment, right?

8 MR. BROUDE: Yes, they would very  
9 much like to. Right now, they're holding it  
10 in an escrow account, Packard-Hughes is  
11 insisting that they cannot trust the  
12 transition work if it's not paid for, so what  
13 you've heard --

14 THE COURT: All right. Well, I'll  
15 put another paragraph in the order saying that  
16 they'll refund the payment. And I think  
17 implicit in that is that their word can be  
18 trusted.

19 MR. BROUDE: Okay. Thank you, Your  
20 Honor. Subject to that, we have an order we

21 can hand up if Your Honor would like.

22 THE COURT: No, I have it.

23 MR. BROUDE: Oh, okay.

24 THE COURT: Well, actually, that has

25 the disk, so why don't you do that? That's

13

1 fine.

2 MR. BROUDE: Yes. Thank you, Your  
3 Honor.

4 MS. MARAFIOTI: Your Honor, item 8  
5 on the agenda is the debtor's motion under  
6 Section 363(b) of the Bankruptcy Code and Rule  
7 6004 to authorize the debtor to enter into and  
8 perform under some agreements with Booz Allen.  
9 Booz Allen is a consulting firm. And under  
10 the agreement, Booz Allen would provide  
11 ongoing support for the restructuring of the  
12 debtor's selling general and administration,  
13 or SG&A, expenses.

14 As you know, this is a fundamental  
15 part of the debtor's transformation and has  
16 referred to it many times. Your Honor, the  
17 work that Booz Allen did, actually began pre-  
18 bankruptcy. And there was a phase 1 of this  
19 project -- we call it the evaluation phase --  
20 that actually did begin before the filing of  
21 these petitions.

22 What we're seeking here is  
23 permission to continue on with the second  
24 phase, which is the design phase of this  
25 program which we hope to bring as much as 450

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1 million dollars in savings for the debtors on  
2 their SG&A line.

3 By this motion we are also, Your  
4 Honor, seeking authority to enter into a third  
5 phase, should the second phase be successful  
6 by the end of September of this year, which is  
7 what we're hoping. Phase 3 is the actual  
8 implementation phase. And in connection with  
9 that, we would be giving special notice to  
10 certain parties and interests so that they  
11 could review what the fees would be and how  
12 the program was going to go forward. All of  
13 these aspects, Your Honor, have been vetted  
14 with the creditors' committee.

15 The fees are set forth in detail.  
16 If the Court has any questions, I can  
17 certainly go over with them. We have in court  
18 today with us the debtor's chief restructuring  
19 officer, John Sheehan, who would be prepared  
20 to testify if need be, about the debtor's  
21 business judgment in determining to go forward  
22 with this very important program.

23 There are no objections to the  
24 motion, Your Honor. And we believe that the  
25 debtors have, in fact, exercised good business

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1 judgment in determining to go forward with it.

2 We actually think this is an ordinary course  
3 of business type of activity. As I mentioned,  
4 the debtors did begin this process before the  
5 bankruptcy and would have done it whether the  
6 bankruptcy occurred or not. But in light of  
7 the large dollar amounts involved and at the  
8 urging of the creditors' committee, as well as  
9 Booz Allen, we are seeking the authority of  
10 the Court to go forward.

11 THE COURT: Okay. And I got a black  
12 line proposed order that, I guess, puts some  
13 more detail on the review process by the  
14 committee.

15 MS. MARAFIOTI: Yes, that's right,  
16 Your Honor. I think that it's a consensual  
17 order at this point.

18 MR. BROUDE: Yes, it is, Your Honor.  
19 Both the retention letter itself, as well as  
20 the order, reflects the input of the  
21 creditors' committee and allows us to review  
22 and have input into whether the success fee  
23 has been earned and whether the phase 3 should  
24 be moved forward and on what basis.

25 THE COURT: Okay. All right.

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1 MS. MARAFIOTI: So with that, Your  
2 Honor, we would request that the Court enter  
3 the request -- the proposed order.

4 THE COURT: All right. In light of  
5 the involvement of the committee and also the  
6 motion papers, which I thought were clear and

7 made the case why this is important, I'll  
8 approve it.

9 MS. MARAFIOTI: Thank you, Your  
10 Honor. I have a disk with the orders if  
11 that's necessary.

12 THE COURT: Okay. Yes, that's fine.

13 MS. MARAFIOTI: And item 9 on the  
14 agenda this morning, Your Honor, is the motion  
15 for an order under -- the debtor's motion  
16 under section 365 of the Bankruptcy Code and  
17 Rule 6006 authorizing the debtor to reject an  
18 OEM License and Supply Agreement with Inovise  
19 Medical.

20 This motion also is uncontested.  
21 The debtors seek authority to reject that  
22 license agreement with Inovise that's dated as  
23 of April 2005. And we'd like to do that  
24 effective as of May 12, so a couple of weeks  
25 ago, Your Honor.

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1 Under the agreement, Inovise had  
2 granted a license of certain intellectual  
3 property that were to be used in connection  
4 with Delphi Medical's vital signs monitors  
5 that it's working on. Delphi Medical, of  
6 course, is one of the debtors in these cases.  
7 The sensors and software are just one of many  
8 technologies that could be used and these  
9 particular technologies are untested so the  
10 debtor believes that to be successful in this  
11 vital signs monitors products program, they

12 need to be relieved of this license.

13 As I said, Your Honor, there are no  
14 objections to the motion and we believe that  
15 it is a proper exercise of the debtor's  
16 business judgment to reject this license.

17 THE COURT: Okay. Based on my  
18 review of the motion, I agree with that. So  
19 I'll approve it. I guess if they have a  
20 claim, it will be governed by the Bar Date  
21 Order.

22 MS. MARAFIOTI: Yes, Your Honor.  
23 And the Bar Date, as we've noted, is July 31  
24 or 30 days, I guess.

25 THE COURT: Okay.

18

1 MS. MARAFIOTI: They have the later  
2 of July 31 or 30 days --

3 THE COURT: Right.

4 MS. MARAFIOTI: -- after the  
5 rejection becomes effective.

6 THE COURT: Right. Okay. So you  
7 can hand up these orders at the end.

8 MS. MARAFIOTI: Okay. Very good.  
9 Item number 10, Your Honor, is a settlement  
10 agreement that we're seeking approval of today  
11 under rule 9019. This is the settlement  
12 agreement with XM Satellite Radio, Inc.  
13 XM and the debtors do a lot of work  
14 together, Your Honor. They've been involved  
15 in providing radio products and servicing  
16 vehicles with consumer electronics for a

17 number of years. And they've cooperated in  
18 design, development, manufacture and  
19 distribution of these various products.

20 But, as might be expected over a  
21 period of time, they have had quite a number  
22 of commercial disputes. And they've been in  
23 protracted negotiations about some of these  
24 disputes regarding subsidies in connection  
25 with certain products. And this particular

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1 dispute involves certain finance and extended  
2 warrantee fees or charges imposed by  
3 Flextronics, which is a third party  
4 manufacturer and supplier of various products  
5 to the debtors. You may remember, Your Honor,  
6 that Flextronics at one time was a member of  
7 the creditors' committee.

8 In an effort to resolve the dispute  
9 and clarify the manner in which the subsidies  
10 will be calculated and solidify the terms  
11 under which XM will support the manufacture,  
12 distribution and marketing of the new  
13 satellite radio products, the settlement  
14 agreement provides for various things.

15 First of all and importantly for the  
16 estates, the parties will exchange mutual  
17 releases in connection with the particular  
18 disputes here.

19 In lieu of agreeing to increased  
20 subsidies for these products, XM intends to  
21 make three quarterly payments to the debtors



22 of 100,000 dollars each, beginning on June  
23 30th of this year, if the Court approves this  
24 settlement. And XM will continue to pay and  
25 the debtors will accept these subsidies in

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1 accordance with the applicable terms of the  
2 agreement and excluding any fees charged by  
3 Flextronics.  
4 Delphi will use good faith efforts  
5 to resolve with Flextronics any open issues  
6 related to nonmanufacturing fees and charges.  
7 XM will waive past and future minimum  
8 marketing development fund spending  
9 requirements and won't be required to  
10 reimburse the debtors for any marketing  
11 development funds already expended or  
12 committed to. XM and the debtors will use  
13 commercially reasonable steps to fulfill  
14 certain obligations regarding some of these  
15 products. And finally, the debtors will  
16 invoice XM for a million dollars to support  
17 the debtor's current engineering -- 2006  
18 engineering and supplier nonrestructuring  
19 engineering costs for these products,  
20 particularly the so-called SKYFi3 product.

21 We believe that this is a reasonable  
22 compromise under the circumstances, Your  
23 Honor. As I said, this is an important  
24 business relationship for the debtors. They  
25 will be receiving the million dollars plus the

21

1 three installments of a hundred thousand.

2 We believe that it is a wise use of  
3 the debtor's estates to enter into this  
4 agreement and we respectfully request that the  
5 Court approve it.

6 THE COURT: Okay. There's a  
7 provision in the agreement that says that the  
8 parties will use commercially reasonable  
9 efforts to enter into a definitive agreement  
10 for the SKYFi3, no later than April 19. Do  
11 you know whether they've done that or whether  
12 there's any reason to think that they won't?

13 MS. MARAFIOTI: Excuse me, Your  
14 Honor. Your Honor, I'm advised that the  
15 parties are actually planning to sign that  
16 today --

17 THE COURT: Okay.

18 MS. MARAFIOTI: -- but that it  
19 hasn't been done just yet.

20 THE COURT: All right. But they're  
21 planning to sign it, so that provision still  
22 holds up.

23 MS. MARAFIOTI: Yes, I think in  
24 other words, they've been successful in their  
25 efforts --

22

1 THE COURT: Okay.

2 MS. MARAFIOTI: -- to achieve  
3 agreement on that subject.

4 THE COURT: And the debtor is still  
5 working with Flextronix on trying to resolve  
6 their issues?

7 MS. MARAFIOTI: Yes, Your Honor.  
8 That's correct.

9 THE COURT: Okay. All right. All  
10 right. Based on my review of the motion, I'll  
11 approve it.

12 MS. MARAFIOTI: Thank you, Your  
13 Honor. The next item, number 11 on the  
14 agenda, is being handled by the Togut Segal  
15 firm.

16 MR. BERGER: Judge, next on the  
17 agenda is the hearing to consider the debtor's  
18 motion for 9915 approval of a settlement -- a  
19 proposed settlement with Furukawa Electric  
20 North America APD, Inc.

21 On February 6th, Your Honor  
22 considered and denied a motion by Furukawa.  
23 It sought relief from the automatic stay to  
24 affect a setoff against a double payment that  
25 it received in the amount of approximately 2.8

23

1 million dollars.

2 The debtors opposed that motion on a  
3 number of bases, generally asserting that the  
4 transfer was a type of avoidable claim and  
5 that, without an allowed claim because of the  
6 operation of 502d, a cause could not be  
7 established for relief from the automatic stay  
8 to assert a setoff.

9                   Your Honor entered an order on March  
10   3rd of this year, denying the setoff motion.  
11   But because the avoidance and recovery of the  
12   subject transfer was not in front of the  
13   Court, that order did not directly return --  
14   of the transfer.

15                  We engaged in negotiations and  
16   informal discovery with Furukawa and reached a  
17   settlement, subject to court approval,  
18   pursuant to which 80 percent of the transfer  
19   will be returned to the debtor's estate. And  
20   that totals \$2,261,205.46 and Furukawa would  
21   retain 565,301.20.

22                  That 80/20 split happened to roughly  
23   equate to the subsequent new value that  
24   Furukawa had been asserting. They asserted  
25   somewhere in the range of 799,000 dollars.

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1   The debtors were able to prove up somewhere in  
2   the range of 500, just north of that. And the  
3   80/20 split worked in the parties general  
4   negotiations concerning the cost of litigation  
5   -- uncertainty of litigation. Furukawa  
6   certainly wasn't in the mood to return all of  
7   the money, not even the 80/20 split that we  
8   originally and subsequently proposed.

9                  We think this is a reasonable, fair  
10   and equitable settlement. We think it's in  
11   the best interest of the debtor's estates. We  
12   continue to do business with Furukawa, not  
13   only in the realm of the transactions that

14 gave rise to this transfer, but also in the  
15 case of a joint venture where they assist us  
16 in an area of growth.

17 Notice of this motion was given to  
18 all known creditors and parties in interest.  
19 There's an affidavit of service on file. Last  
20 week -- I believe it was last week or the week  
21 before -- we sent to chambers a revised form  
22 of stipulation and order as well as a black  
23 line draft that incorporates changes that were  
24 requested by the creditors' committee to make  
25 certain that the releases that were being

25

1 granted by the debtors and their estates,  
2 pertained only to the transfer in question and  
3 to the amended claim that Furukawa may file to  
4 reflect this settlement.

5 THE COURT: Okay. All right. This  
6 appears to me a reasonable settlement as well.  
7 So, I'll approve it.

8 MR. BROUDE: Thank you, Your Honor.  
9 Your chambers has a disk with an order on it.

10 THE COURT: Okay. You're sure?

11 MR. BROUDE: We'll submit another  
12 disk.

13 THE COURT: I didn't see it in the  
14 files, so --

15 MR. BROUDE: We'll be happy to send  
16 another disk.

17 THE COURT: Thank you.

18 MS. MARAFIOTI: The next item on the

19 agenda, number 12, is a motion to approve a  
20 settlement with Flextronics under rule 9019.  
21 I might say, first off, Your Honor, that this  
22 is completely unrelated to Flextronics'  
23 involvement in the XM settlement that we just  
24 discussed a minute or so ago.

25 By way of background, the debtors

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1 and Flextronics International Asia Pacific and  
2 certain of their affiliates are parties to  
3 numerous purchase agreements under which  
4 Flextronics manufactures and supplies various  
5 products to the debtors.

6 Pre-bankruptcy, one or more of the  
7 debtors owed Flextronics about 6.7 million  
8 dollars for products that were delivered prior  
9 to the petition date. Flextronics also owed  
10 one of the debtors 5.8 million dollars on  
11 account of pre-petition overpayments.

12 Now, the reason we're here today  
13 Your Honor, on this matter, as opposed to  
14 simply dealing with it under paragraph 18 of  
15 the DIP order is that there are a couple of  
16 twists on this agreement.

17 The first is that Flextronics  
18 actually received payment for that 6.7 million  
19 dollars from a nondebtor. So it's been fully  
20 paid, and as a result of that, actually left  
21 the creditors' committee.

22 But there still remained the issue  
23 of the 5.8 million dollars that was owed to

24 the debtors. And in anticipation of the  
25 Court's approval of this agreement,

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1 Flextronics was persuaded to actually pay to  
2 the debtors the 5.8 million dollars. And that  
3 money has been paid.

4 Now, as adequate protection for  
5 whatever setoff rights it may have, rather  
6 than simply working under paragraph 18 of the  
7 DIP order, Your Honor, there are certain  
8 slight changes here. Flextronics -- in the  
9 event -- sorry -- that Flextronics would  
10 return or be required to return any portion of  
11 the guarantee payments that it got already, it  
12 would be entitled to exercise its pre-petition  
13 setoff rights, if any, against post-petition  
14 payables owed to the debtors and would be  
15 entitled to the adequate protection set forth  
16 in the DIP financing order.

17 And in the event that Flextronics  
18 has no post-petition payables against which to  
19 set the money off, it would effectively  
20 receive the entire amount in cash within ten  
21 business days of the effective date of the  
22 reorganization plan.

23 So that's why this is a little bit  
24 different, Your Honor. But we have gone over  
25 this at length with the creditors' committee

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1 and there are no objections that have been  
2 filed and we would respectfully request that  
3 the Court --

4 THE COURT: Okay. So this -- the  
5 adequate protection only kicks in if the -- if  
6 Flextronics has to repay the money it's  
7 already been paid.

8 MS. MARAFIOTI: That's right, Your  
9 Honor.

10 THE COURT: I guess there's some  
11 sort of avoidance theory.

12 MS. MARAFIOTI: I'm sorry?

13 THE COURT: Under some sort of  
14 avoidance theory, I'm assuming.

15 MS. MARAFIOTI: That's right.  
16 That's right.

17 THE COURT: All right. Which I hope  
18 is unlikely. So I will approve the  
19 stipulation.

20 MS. MARAFIOTI: Thank you, Your  
21 Honor. Number 13 is another settlement  
22 motion, Your Honor, under rule 9019 with  
23 Electrical Carbon. This one is a little bit  
24 detailed. And of course we have all of the  
25 relevant facts set forth in the pleadings and

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1 I don't want to burden the record here today.  
2 But what it's all about is a pre-bankruptcy  
3 anti-trust litigation that Delphi was involved  
4 in as a plaintiff, involving three sets of



5 defendants. I'll call them the Morgan  
6 defendants, the Schunk defendants, S-C-H-U-N-  
7 K, and SGL Carbon. I mean, that's probably  
8 familiar to the Court. There are certain  
9 other defendants, Your Honor, that are not the  
10 subject of this motion, that continue on as  
11 defendants in this anti-trust litigation.

12 What happened is that in 2002 the  
13 Justice Department initiated proceedings  
14 against Morgan in District Court in  
15 Pennsylvania claiming illegal behavior in  
16 furtherance of a global conspiracy to suppress  
17 and eliminate competition by fixing the prices  
18 of electrical carbon products.

19 After that happened, a number of  
20 parties brought private anti-trust claims  
21 against Electrical Carbon and others in the  
22 District Court in New Jersey. And they were  
23 ultimately consolidated as MDL litigation in  
24 New Jersey. And certain of the class  
25 plaintiffs there decided to enter into a

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1 settlement. And Delphi, among others, chose  
2 not to do that because they thought they might  
3 do better if they worked on their own.

4 So in August of last year, Delphi  
5 and thirteen other similarly situated parties  
6 opted out of that MDL class settlement  
7 litigation and filed a complaint against the  
8 MDL defendants on their own.

9 Now, what's before us today, Your

10 Honor, is the settlement against three of  
11 those parties, as I mentioned. And what will  
12 the debtors get out of this? Well, first of  
13 all, there will be a dismissal of the U.S.  
14 action against the settling defendants and the  
15 individual defendants with prejudice and  
16 without cost.

17 So, though Delphi could still bring  
18 claims -- foreign claims against these  
19 parties, I would like to point out -- the  
20 parties will withdraw their requests -- or  
21 Delphi will withdraw its request to exclude  
22 itself from the Morgan, Schunk, and SGL  
23 settlements. There will be a release and  
24 discharge of the settling defendants from any  
25 nonforeign claims. And in exchange, the

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1 Schunk defendants have agreed to pay the  
2 plaintiffs 150,000 dollars. They've agreed to  
3 cooperate with the plaintiffs in pursuing the  
4 action against the remaining defendants, which  
5 is where we think the real claims might lay.  
6 And the Morgan and Schunk defendants have  
7 agreed to toll, for a period of 12 months, the  
8 relevant statutes of limitation in respect of  
9 those foreign claims that will remain alive.

10 Additionally, class counsel in the  
11 MDL proceeding has agreed to reduce its fee by  
12 approximately 900,000 dollars so there will be  
13 more left in the pool to go around for all the  
14 various parties. The anticipated recovery

15 from the settlements, in the hands of the  
16 debtors, is approximately 1.1 million, based  
17 on the amounts that we have purchased from  
18 them over time.

19 So, we believe that this is a very  
20 sensible settlement, Your Honor. And, again,  
21 the matter is uncontested and we would ask  
22 that the Court approve of the entry into this  
23 agreement.

24 THE COURT: All right. I'll approve  
25 it for the reasons stated. Is it subject to

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1 further approval by the MDL court, or is this  
2 it?

3 MS. MARAFIOTI: I don't believe so,  
4 Your Honor.

5 THE COURT: Okay. All right.

6 MS. MARAFIOTI: Okay. The next  
7 matter, which is number 14, is also a  
8 settlement under 9019, Your Honor. We have  
9 quite a number of these today. This is a  
10 motion authorizing us to enter into a license  
11 agreement with Denso Corporation, D-E-N-S-O.  
12 There's a related motion that's been  
13 filed, Your Honor. It's a motion to file  
14 under seal the actual amount of the payment.  
15 I think the Court is aware of what that is and  
16 I'll get to that in a moment.

17 Just by way of background again, all  
18 of the relevant facts are set forth in the  
19 papers and I won't belabor the record. But,

20 Denso alleged that Delphi was infringing on  
21 several of Denso's patents relating to a  
22 gasoline engine management system that's used  
23 to control engines that operate on gasoline.  
24 And the parties have been engaged in  
25 negotiations on this for four solid years in

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1 an effort to resolve this dispute.

2 In July of last year, Denso sued  
3 Delphi in the District Court in the district  
4 of Delaware, alleging patent infringement.  
5 And, of course, that litigation was stayed as  
6 a result of these cases.

7 The parties continued to engage in  
8 negotiations after the filing of the Denso  
9 action and indeed after the filing of the  
10 bankruptcy case and have agreed to enter into  
11 a licensed agreement, pursuant to which the  
12 following things will happen.

13 First of all, again, there will be  
14 mutual releases exchanged by the parties in  
15 connection with the claims and counterclaims  
16 that are directly related to this matter.

17 Delphi will obtain a license under  
18 21 Denso patents and an option to designate  
19 two additional patents that it believes would  
20 be quite valuable to it in its business.

21 Denso will also get a license from  
22 Delphi on several existing patents. And  
23 finally, Delphi will pay Denso a sum of money  
24 that has been disclosed to the Court and filed

25 under seal.

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1           The patent litigation is very  
2 costly, Your Honor. And the parties have been  
3 engaged in this process for some number of  
4 years, as I mentioned. If Denso were to  
5 pursue the action, the litigation costs alone,  
6 we think, could approach the amount of the  
7 settlement payment.

8           And, moreover, both of the parties  
9 have agreed to a five-year moratorium on  
10 future charges of infringement under these  
11 particular patents that are the subject of the  
12 settlement. And we think that will be very  
13 valuable for our business as well.

14           So, in light of the fact, among  
15 other things, that there are no objections  
16 that have been filed to this motion, we would  
17 respectfully ask the Court to approve it.

18           THE COURT: Okay. In light of that  
19 fact and the motion itself, I'll approve it.

20           MS. MARAFIOTI: Thank you, Your  
21 Honor. The next item on the agenda is matter  
22 number 15 and it's being handled by White &  
23 Case.

24           THE COURT: Okay.

25           MS. MARAFIOTI: I guess it's not

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1 being handled by White & Case. The item on

2 the agenda, Your Honor, is the shareholder's  
3 emergency motion for an order to expand the  
4 size of the equity committee to include three  
5 additional parties: Appaloosa, Wexford, and  
6 Lampay Conway.

7 The debtors understand that, based  
8 on an email that was sent to us by White &  
9 Case, that White & Case intended to withdraw  
10 the motion today in Court. And we reported  
11 that to the United States Trustee. And in  
12 reliance on that, none of us filed any papers.  
13 I take it by their absence that they in fact  
14 do want to withdraw this motion.

15 THE COURT: All right. I take that  
16 to be the case as well. However, if there is  
17 no formal withdrawal, I'll simply deny the  
18 motion by the end of the week.

19 MS. MARAFIOTI: Thank you, Your  
20 Honor.

21 THE COURT: Okay.

22 MS. MARAFIOTI: And that brings us  
23 to the last item on the agenda, number 16,  
24 which is the motion of Mary and Liam O'Neil  
25 for relief from the automatic stay to pursue a

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1 personal injury litigation that's pending in  
2 state court in Illinois. I don't know if  
3 Counsel for the O'Neil's is here.

4 THE COURT: Wasn't this the one  
5 where you were going to give them the  
6 insurance policy to look over?

7 MS. MARAFIOTI: That's right, Your  
8 Honor. And there was also some other  
9 discovery that the Court -- very limited  
10 discovery that the Court permitted, and the  
11 O'Neils served that discovery on us in April.  
12 We asked for a protective order because we  
13 needed to turn over the insurance policies  
14 which we think contain competitive and  
15 business-sensitive information.

16 For a number of reasons, I think  
17 through no fault of the parties, it took  
18 awhile for the parties to agree on the form of  
19 a protective order. That was just agreed upon  
20 last Friday. And immediately upon signing  
21 that stipulation which has now been submitted  
22 to the Court for signature, I believe, we  
23 turned over the policies to the O'Neil's  
24 counsel and we also responded to  
25 interrogatories that had been propounded to

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1 us.

2 So, unfortunately there hasn't been  
3 a lot of time between Friday and today for us  
4 to have any further conversations with counsel  
5 about this and I will turn the podium over to  
6 them.

7 THE COURT: Okay. I signed the  
8 protective order this morning.

9 MS. MARAFIOTI: Thank you, Your  
10 Honor.

11 MR. MENAKER: Good morning, Your

12 Honor.

13 THE COURT: Good morning.

14 MR. MENAKER: Richard Menaker, of  
15 Menaker & Herman, LLP, representing the  
16 O'Neils. We would be grateful if we could  
17 have a reasonable opportunity to read the  
18 materials that were provided to us late in the  
19 day on Friday. And, therefore, I ask this  
20 matter to be put over to the next available  
21 date for the Court.

22 THE COURT: Okay. That's June  
23 16th, right?

24 MS. MARAFIOTI: We have no problem,  
25 Your Honor, with that.

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1 THE COURT: Okay. Very well. And  
2 I --

3 MR. MENAKER: Thank you, Your Honor.

4 THE COURT: -- and assuming that  
5 after you review them you'll be able to talk  
6 with the debtors and maybe this can be  
7 resolved.

8 MS. MARAFIOTI: We're certainly  
9 hopeful that that can be accomplished, Your  
10 Honor.

11 THE COURT: Okay.

12 MR. MENAKER: Thank you.

13 MS. MARAFIOTI: And I think that  
14 concludes the matters that are on the calendar  
15 for today, Your Honor, unless the Court has  
16 something else.



17 THE COURT: No, that's it. Thanks.

18 MS. MARAFIOTI: Okay. Thank you,

19 Your Honor.

20 THE COURT: Okay.

21 (Time noted: 11:38 a.m.)

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1 C E R T I F I C A T I O N

2

3 I, Sharona Shapiro, hereby certify that  
4 the foregoing is a true and correct  
5 transcription, to the best of my ability, of  
6 the sound recorded proceedings submitted for  
7 transcription in the matter of the bankruptcy  
8 proceeding of:

9 DELPHI CORPORATION

10

11 I further certify that I am not employed  
12 by nor related to any party to this action.

13

14 In witness whereof, I hereby sign this  
15 date:

16 May 31, 2006.

17

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19 \_\_\_\_\_  
Sharona Shapiro

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